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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,521

11/12/2003

Eoin J.P. Callan

2C06.1-010

7694

23506 7590 03/07/2007
GARDNER GROFF SANTOS & GREENWALD, P.C.
2018 POWERS FERRY ROAD
SUITE 800
ATLANTA, GA 30339

EXAMINER

PATEL, NIHIR B

ART UNIT

PAPER NUMBER

3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

Office Action Summary	Application No. 10/706,521	Applicant(s) CALLAN, EOIN J.P.	
	Examiner Nihir Patel	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12.18.2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Declaration of Eoin J.P. Callan filed on December 5th, 2006 under 37 CFR 1.131 is sufficient to overcome the previous rejection to reference (US 6,758,215 to Begum).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Glass (US 6,412,486).
4. As to claim 1, Glass teaches an apparatus that comprises a panel having an inner side 33 (see column 4 lines 1-5) and an outer side 31 (see column 4 lines 15-20) and at least one fastener affixed to the panel for attaching the mask to a wearer (see figures 1 and 4; column 3 lines 50-55 and column 5 lines 1-10), the respiratory mask further comprising at least one display originally visible on the outer side of the panel (see figure 4; column 3 lines 5-10 and column 5 lines 35-50).
5. As to claim 2, Glass teaches an apparatus wherein the display comprises graphical matter (see figure 4 and column 5 lines 35-50).
6. As to claim 3, Glass teaches an apparatus wherein the display comprises text (inherently an advertising message is described as text; see column 5 lines 35-50).

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7. As to **claim 4**, Glass teaches an apparatus wherein the display comprises graphics and text (**inherently an advertising message is described as text and graphics; see column 5 lines 35-50**).

8. As to **claims 5 and 6**, Glass teaches an apparatus wherein the display comprises graphics depicting a national flag or a smiling face (**see column 5 lines 35-50; Glass clearly states that the printing can include colors, patterns or design; inherently design is defined as a national flag or a smiling face**).

9. As to **claim 7**, Glass teaches an apparatus wherein display comprises information regarding a pharmaceutical product (**see column 5 lines 35-50; Glass clearly states that the printing can be an advertising message; inherently the advertising message can be defined as information regarding a pharmaceutical product**).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glass (US 6,412,486).

13. As to claims 8-11, Glass substantially discloses an apparatus that comprises a panel having an inner side 33 (see column 4 lines 1-5) and an outer side 31 (see column 4 lines 15-20) and at least one fastener affixed to the panel for attaching the mask to a wearer (see figures 1 and 4; column 3 lines 50-55 and column 5 lines 1-10), the respiratory mask further comprising at least one display originally visible from the first side of the mask, the method comprising providing information regarding specified characteristics of the wearer in the at least one display of the mask (see column 5 lines 35-50; Glass clearly states that the printing can be an advertising message; inherently the advertising message can be defined as providing information regarding specified characteristics of the wearer in the at least one display of the mask).

The claimed method steps would have been obvious because they would have resulted from the use of the device of Glass.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit 3772

Nihir Patel

Patricia Bianco
PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700
3/5/07